

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

W.H. JOHN SMITH,

CIVIL NO. 14-3425 (MJD/JSM)

Plaintiff,

v.

REPORT AND RECOMMENDATION

DENESE WILSON, Warden; and
KATHLEEN M. KENNEY,
General Counsel,

Defendants.

JANIE S. MAYERON, United States Magistrate Judge

Plaintiff W.H. John Smith ("Smith"), a federal prisoner, commenced this action by filing a complaint seeking relief under 42 U.S.C. § 1983. He did not pay the filing fee for this case, but instead filed an application seeking leave to proceed *in forma pauperis*. Docket No. 2. In an order dated September 16, 2014, this Court informed Smith that he would be required to pay an initial partial filing fee of \$44.80 within 20 days of the date of that order, failing which this Court would recommend that this case be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute. See Docket No. 3.

That deadline has now passed, and Smith has not paid the initial filing fee as previously ordered. In fact, Smith has not communicated with the Court at all since commencing this action. Accordingly, this Court now recommends, in accordance with its prior order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. See *Henderson v. Renaissance Grand Hotel*, 267 Fed. App'x 496, 497 (8th Cir. 2008) (per curiam) ("A district court has discretion to dismiss an action under

Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

RECOMMENDATION

Based on the foregoing, and on all of the files, records, and proceedings herein,

IT IS HEREBY RECOMMENDED THAT:

1. This action be DISMISSED WITHOUT PREJUDICE for failure to prosecute.
2. Plaintiff W.H. John Smith's application to proceed *in forma pauperis* [Docket No. 2] be DENIED AS MOOT.

Dated: October 29, 2014

s/ Janie S. Mayeron

JANIE S. MAYERON

United States Magistrate Judge

NOTICE

Under D. Minn. LR 72.2(b) any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties by **November 12, 2014**, a writing which specifically identifies those portions of this Report to which objections are made and the basis of those objections. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals. A party may respond to the objecting party's brief within fourteen days after service thereof. All briefs filed under this rule shall be limited to 3500 words. A district judge shall make a de novo determination of those portions of the Report to which objection is made. This Report and Recommendation does not constitute an order or judgment of the District Court, and it is therefore not appealable directly to the Eighth Circuit Court of Appeals.